87-342 (1)

No.

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

THOMAS B. HUDGINS AND BILLIE E. BILLMAN,
Appellants,

v.

INTERNAL REVENUE SERVICE,
Appellee.

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

(1) Whether the lawsuits on appeal should be vacated as moot and remanded for dismissal for lack of jurisdiction and, if not, whether Hudgins and Billman hold estoppel by judgment against the Internal Revenue Service and the Commissioner of Internal Revenue for the years 1975 through 1985?

(2) Whether the judgment of January 8, 1987 of the United States Court of Appeals for the District of Columbia Circuit declaring the position of Hudgins and Billman frivolous and imposing sanctions was an abuse of discretion?

LIST OF PARTIES

The following parties were involved in the three Freedom of Information Act (FOIA), 5 USC 552, lawsuits on appeal and the three related Tax Court cases; the Commissioner of Internal Revenue, the Internal Revenue Service and the United States Department of Justice.

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IN THE

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No.

THOMAS B. HUDGINS AND BILLIE E. BILLMAN,
Appellants,

v.

INTERNAL REVENUE SERVICE,
Appellee.

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JURISDICTIONAL STATEMENT

Appellants, Hudgins and Billman, appeal from the final Orders of the United States Court of Appeals for the District of Columbia Circuit, dated June 17, 1987, as being unconstitutional, i.e., against the validity of the Judiciary and Judicial Procedure Act, Title 28 and the Privacy Act of 1974, 5 USC 552, in that the orders deny appellants due process of law under the Fifth Amendment to the United States Constitution.

OPINIONS BELOW

The (a)(2) Freedom of Information Act judgment rendered in *Hudgins v. IRS, et. al.*, CA 84-1712 (DC DC, September 10, 1984) was reported erroneously. It is

published in U.S. Tax Cases under a Privacy Act lawsuit, *Hudgins v. Commissioner,* CA 83-3490 (DC DC 1984), cited as 84-2 USTC 9854 [85,557-8]. The judgment was rendered without opinion. It is appendix A.

The Freedom of Information Act judgments rendered by the U.S. Court of Appeals for the District of Columbia Circuit in *Hudgins and Billman v. Internal Revenue Service,* Cir. No. 85-5992 combined with 85-6064/6065 on January 8, 1987 are not to be published. The judgments are stamped: See local Rule 8(f). They are appendix B. A motion to vacate these judgments as moot and to remand the cases to be dismissed for lack of jurisdiction was filed by appellants on March 18, 1987. See appendix C. The motion to vacate was effectively denied by the lower courts' Orders of June 17, 1987 imposing mandates, judgments and sanctions. See Orders, appendix D.

There are three related Tax Court cases on appeal in the U.S. Court of Appeals for the District of Columbia Circuit that contain identical issues. *Billman v. Commissioner of Internal Revenue,* Cir. No. 86-1602 denied on May 20, 1987. See appendix E. *Hudgins v. Commissioner of Internal Revenue, Cir. No. 87-1173 and Hudgins v. Commissioner of Internal Revenue,* Cir. No. 87-1277, both pending. A timely motion was placed in each of the Tax Court cases to vacate the judgment as moot and to remand for dismissal, where necessary, for want of jurisdiction. The motions to vacate judgment were filed and denied. The Commissioner did not respond to the moot issue nor did the Court require it. The Orders and motions are omitted to avoid redundancy.

JURISDICTION

Thomas B. Hudgins and Billie E. Billman, appellants herein, appeal from the Orders issued by the United States Court of Appeals for the District of Columbia Circuit on June 17, 1987 imposing mandates, judgments and sanctions. The Orders effectively denied appellants' motion to vacate FOIA judgments as moot. The proceedings in the court below were under the Freedom of Information Act, 5 USC 552. Jurisdiction was under 28 USC 1291.

The appeal to this Court is taken pursuant to 28 USC 1252. The supporting case to sustain jurisdiction is *International Ladies Garment Workers' Union v. Donnelly Garment Co.*, 304 U.S. 243, 249 (1938) (decision against the validity of an Act or Congress, however the question of constitutionality may arise) and *U.S. v. Munsingwear Corp., 340 U.S. 36, 39-41 (1950) (jurisdiction wanting in a moot case).*

Three related Tax Court cases with identical arguments are appealed herein, as well. The supporting case to sustain jurisdiction over the related cases is Regan v. Taxation With Representation of Washington, 461 U.S. 540, 543 n. 3 (1983) (whole case goes up on appeal).

Hudgins and Billman additionally filed a related petition for writ of mandamus and/or prohibition to this Court on May 12, 1987 docketed as 86-1910.

A Notice of Appeal was filed with the Clerk of the U.S. Court of Appeals for the District of Columbia Circuit on July 1, 1987. The Notice of Appeal was timely filed within thirty days of the Orders of June 17, 1987. It is appendix F.

STATEMENT OF THE CASE

Billma appeared in the United States Tax Court in 1984 and contested the jurisdiction of the Court because he contended that the statutory scheme, IRS Privacy Act Notice (hereinafter NOTICE), failed to cite section 6012 IRC as the natural person's requirement to disclose information on federal individual income tax forms as required by the Privacy Act at section (e)(3)(A) and the Treasury Department Privacy Act Regulation, 31 CFR 1.35(b)(2). *Billman v. Commissioner of Internal Revenue,* Docket No. 5881-82. Billman also contented that the IRS NOTICE would have to be published in the Federal Register in order to impose an obligation. The Court denied these contentions as meritless and imposed a tax. Hudgins was a witness for Billman in Tax Court. Billman timely appealed.

Shortly before the decision was rendered in *Billman,* supra, Hudgins obtained a final (a)(2) judgment, under the Freedom of Information Act (FOIA), 5 USC 552, that ruled that section 6012 IRC was the requirement for individuals to disclose information on federal individual tax forms under the Freedom of Information Act and the Privacy Act. The judgment was rendered by the Honorable Louis F. Oberdorfer, former Assistant Attorney General of the United States for the Tax Division (App. A). The judgment was rendered in response to the defendants' request for a judgment on the pleadings to dismiss Hudgins' FOIA complaint with prejudice for failure to state a claim. The Court ruled on the merits, instead, agreeing with Hudgins that section 6012 IRC was the requirement for individuals to disclose information on federal individual tax forms under the Privacy Act.

Hudgins and Billman sued the IRS, under the FOIA, to publish their NOTICE In the Federal Register. *Hudgins and Billman v. IRS,* CA 84-3830 (DC DC 1984), denied with prejudice for failure to state a claim, appealed in the D.C. Circuit as Cir. No. 85-5992. Additionally, Hudgins and Billman sued the IRS, under the FOIA, to cite section 6012 IRC in their disclosure regulation (IRS NOTICE). *Billman v. IRS* CA 84-1014 (DC DC 1984) and *Hudgins v. IRS,* CA 84-0865 (DC DC 1984), both denied with prejudice for failure to state a claim. These cases were appealled as Cir. Nos. 85-6064 and 6065, respectively.

On appeal, the Circuit Court of Appeals for the District of Columbia Circuit combined these lawsuits for a hearing. Hudgins' and Billman's positions were held to be frivolous by the Internal Revenue Service and a judgment was rendered on January 8, 1987 by the court imposing sanctions against Hudgins and Billman for bringing frivolous FOIA Lawsuits (App B). But, the day before the judgment was received by mail, it came to appellants' attention that the IRS changed the statutory scheme for the collection of the income tax to include section 6012 IRC in their new disclosure regulation (NOTICE) for 1986 as the individual's requirement to disclose on federal individual income tax forms. See appendix G. the new IRS NOTICE for 1986.

Hudgins and Billman petitioned for a rehearing with a suggestions for rehearing en banc. Both were denied. See Orders, appendixes H and I.

Hudgins and Billman filed a motion on March 18, 1987 to vacate the judgment of January 8, 1987 as moot and to remand the cases to be dismissed for want of jurisdiction in accordance with established procedure (App. C). *U.S. v. Munsingwear Corp.,* 340 U.S. 36, 39-41 (1950). The

motion to vacte judgment as moot was effectively denied by the Court's Orders of June 17, 1987 imposing the mandates, judgments and sanctions. The Order of May 20, 1987 (App. E) in the related case, *Billman v. Commissioner,* Cir. No. 86-1602, indicates that an order was issued by the court denying appellants' motion to vacate the three FOIA lawsuits but neither Hudgins nor Billman received such an order. And, the Court did not request the government to respond to the moot issue, nor did the government offer a response to appellants' motion as required by the practice and procedure of this Court.

CONSTITUTIONAL PROVISIONS AND RULES

Nor shall any person . . . be deprived of life, liberty, or property without due process of law. Fifth Amendment, United States Constitution.

THE QUESTIONS ARE SUBSTANTIAL

Hudgins and Billman hold estoppel by judgment, collateral estoppel, against the Internal Revenue Service for the taxable years 1975 through 1985. The estoppel by judgment was rendered under the Freedom of Information Act, 5 USC 552. *Hudgins,* CA 84-1712, supra.

A judgment on the pleadings, which determines the merits of the controversy, is a bar to another action for the same cause. 50 Corpus Juris at page 647. In other words, *Hudgins, CA 84-1712, supra, is res judicata on this point of law. Neither the Internal Revenue Service nor the Commissioner of Internal Revenue appealed the (a)(2) judgment rendered on the merits in Hudgins* CA 84-1712.

But, the IRS NOTICE in effect at the time did not cite section 6012 IRC as the individual's requirement to

disclose information as required by law and regulation. Based on the judgment rendered in *Hudgins,* CA 84-1712, supra, Hudgins and Billman sued the IRS gain, under the FOIA, to cite section 6012 IRC in their NOTICE as the individual's requirement to disclose information on federal individual tax forms. A lawsuit to enjoin an agency to make information available that is not published in the Federal Register is authorized under the (a)(2) provisions of the Freedom of Information Act. *American Mail Line, Ltd. v. Gulick,* 411 F.2d 696, 701-02 (D.C. Cir. 1969).

Additionally, Hudgins and Billman sued the IRS, under the FOIA, to publish their NOTICE in the Federal Register. The Sixth Circuit has declared that a disclosure regulation of a federal agency, under another prima facie statute, Title 42, would have to be published in the Federal Register in order to be authorized by law. *Parkridge Hospital, Inc. v. Califano,* 625 F.2d 719, 722 (6th Cir. 1980). Moreover, the (a)(1) provisions of the Freedom of Information Act can be used to enjoin an agency to publish their rules in the Federal Register. *American Mail Line, Ltd. v. Gulick,* supra. Both of these lawsuits were dismissed with prejudice for failure to state a claim in the District Court for the District of Columbia.

By citing section 6012 IRC in their new NOTICE for 1986, the IRS has mooted the fact that Hudgins and Billman stated a claim, has mooted the fact that *Hudgins,* CA 84-1712, supra, is res judicata on the point of law that section 6012 IRC is the individuals' requirement to disclose, has mooted the fact that their former NOTICE(s) were jurisdictionally defective, has mooted the fact that there was no need to publish a defective disclosure regulation in the Federal Register and has mooted the fact that the positions of Hudgins and Billman were not frivolous.

In other words, the IRS mooted the three Freedom of Information Act lawsuits on appeal in the U.S. Court of Appeals for the D.C. Circuit.

It is a fundamental denial of due process for the Court below to issue Orders imposing mandates, judgments and sanctions in moot cases. The orders of January 8, 1987 are against the validity of 28 USC 2072. The U.S. Court of Appeals for the D.C. Circuit denied appellants' fundamental rights to due process under the Fifth Amendment to the United States Constitution. 28 USC 2072 specifically states:

> "Such rules shall not abridge, enlarge, or modify any substantive right . . . . to the Constitution."

Local rule 8(f), under which the judgment of January 8, 1987 was issued, was used by the U.S. Court of Appeals for the D.C. Circuit to deny Hudgins and Billman due process under the Fifth Amendment. When a case becomes moot, the court loses jurisdiction under Article III of the U.S. Constitution. There is no longer a case or controversy. The court below lacked jurisdiction to issue the orders imposing the mandates, judgments and sanctions. The action of issuing the Orders, without demanding comment from government on the moot issue, indicates collusion on the part of the court below and the government to deny Hudgins and Billman due process. This Court has held that both counsel should immediately inform the Court when a case becomes moot and has admonished counsel for not doing so. *Fusari v. Steinberg*, 419 U.S. 379, 387 n.12 (1975). This point was further emphasized when the Court declared that such a "development should be called to the attention of the Court without delay." *Tiverton Bd. of License Comm'rs v. Pastore* 469 U.S. ____ (1985). The government refused to respond to

the moot issue and recommended imposing sanctions instead. It is also a usurpation of power.

The Orders of June 17, 1987 imposing mandates, judgments and sanctions are against the validity of 28 USC 2072 and, hence, grant jurisdiction to this Court to review this case on direct appeal.

Moreover, the Orders issuing the mandates and judgments of January 8, 1987 are against the validity of the Privacy Act of 1974. The Privacy Act, at section (e)(3)(A), requires that the IRS NOTICE inform individuals of the statutory or regulatory (executory) requirement to disclose information on federal individual income tax forms. This point is confirmed by the Treasury Department Privacy Act Regulation, 31 CFR 1.35(b)(2), and the legislative history to the Privacy Act. It was further confirmed on the merits in *Hudgins,* CA 84-1712, supra. The government has mooted the point in their new NOTICE for 1986. Using a local rule of the court, rule 8(f), to issue the judgment of January 8, 1987 against the validity of the Privacy Act of 1974 further grants this Court jurisdiction to hear this case on direct appeal.

The IRS NOTICE is the jurisdictional disclosure regulation of the Internal Revenue Service. It states the statutory and regulatory authorities for soliciting and requiring disclosure of information on federal individual tax forms. As such, it is a significant part of the statutory scheme for the collection of the federal individual income tax. Since 1975, the Privacy Act of 1974 controls whether or not a citizen is required to disclose information on federal individual income tax returns.

All NOTICES prior to 1986 were statutorily defective. All prior NOTICES cited sections 6001, 6011 and 6109 as the authorities soliciting information. Response under sec-

tions 6001 and 6011 was stated to be mandatory. But, these sections are all conclusions of law addressed to the person liable or the person required (taxpayer). A conclusion of law addressed to a taxpayer did not fulfill the statutory requirement of the Privacy Act, section (e)(3)(A), which requires that the natural person be informed of the statutory or regulatory requirement to disclose information when solicited by an agency. In income tax matters, this means each taxable year. Only section 6012 IRC addressed the requirement of natural persons (private individuals). *Hudgins,* CA 84-1712, supra. The statutory requirement of the natural person, section 6012 IRC, was not cited as required by law and regulation. The former NOTICES were fatally defective on this point. If the law required one to be notified of the statutory requirement each year when the government solicited information and the government refused to cite the requirement, there was no requirement in effect. This court has long held section 6012 IRC to be the statutory requirement to disclose information of federal individual tax forms. *Marchetti v. United States,* 390 U.S. 39, 48-49 (1968). A liability can be created by statute. *Cannon v. Miller,* 22 Wash. 2nd 227, 155 P2nd 500, 508.

Moreover, the requirement to disclose information on federal individual income tax returns is geared to a taxable year. A new cause of action arises each taxable year in individual income tax matters, including whether or not the individual is required to disclose (file) the information on federal individual income tax returns. *Commissioner v. Sunnen,* 333 U.S. 491, 498 (1948). This point is borne out by the fact that the IRS NOTICE is required to be issued each taxable year to individuals when information is solicited. It is also borne out by the fact that any multiple year indictment for the criminal offense of failure to file

will cite each taxable year separately. Each year will be listed as a separate cause of action by the government. The requirement or obligation of an individual to disclose the information on a federal individual income tax form is a new cause of action each taxable year. *Sunnen,* supra. It should also be noted that the individual is referred to as both the person liable (obligated) and the person required in the IRS NOTICE. In other words, the words liable and required are used interchangeably in the CODE in reference to individuals. And, the liability of individuals for the income tax is established by statute. *Marchetti,* supra.

Consequently, Hudgins and Billman hold estoppel by judgment in *Hudgins,* CA 84-1712, supra, for the years 1975 through 1985. Estoppel by judgment, collateral estoppel, can estop a liability for federal individual income taxes. *Sunnen,* supra. It is for this reason that the government changed the statutory schemer to include section 6012 IRC in their new jurisdictional disclosure regulation for 1986. The NOTICE for 1986 is now in agreement with the judgment rendered in *Hudgins,* CA 84-1712, supra.

Identical arguments were used by Hudgins and Billman in related Tax Court cases. Billman appeared in Tax Court for the taxable year 1977 and objected to the fraudulent disclosure regulation (IRS NOTICE). This was the first time this argument was ever presented in a court of the United States to appellants' knowledge. ***Billman v. Commissioner,*** Cir. No. 86-1602 (D.C. Cir. 1987), motion to vacate decision as moot and to remand for lack of jurisdiction, filed March 13, 1987, effectively denied by the Order of May 20, 1987 (App. E). Hudgins appeared in Tax Court, under special appearance and legal duress, for the taxable years 1981 and 1982 to object to the defective disclosure regulation in effect. Motions to vacate the Tax

Court decisions against Hudgins as moot were denied by the Tax Court in each case. The cases were appealed to the D.C. Circuit. *Hudgins v. Commissioner,* Cir. No. 87-1173 and *Hudgins v. Commissioner,* Cir. No. 87-1277. All are appealed herein as related cases. The 'whole case' goes up on direct appeal. *Regan v. Taxation With Representation of Washington,* 461 U.S. 540, 543 n. 3 (1983).

All circuits of the United States have consistently held the former IRS NOTICE(s) to be adequate for Privacy Act compliance. But, this was not true. The former NOTICE was statutorily defective. It did not comply with section (e)(3)(A) of the Privacy Act of 1974 and Treasury Department Privacy Act Regulation, 31 CFR 1.35(b)(2), and cite the statutory or regulatory requirement for an individual to disclose information on federal individual income tax forms. This can only mean that the statutory scheme for the collection of the individual income tax lacked subject matter jurisdiction over natural persons (private individuals) from 1975 through 1985. There has been an overwhelming usurpation of authority in effect for those years.

Hudgins and Billman do not object to paying their fair share to maintain their government, they merely object to the dishonesty and illegallity in the manner of its collection.

It is an absolute denial of due process for the court below to impose sanctions against Hudgins and Billman for suing the government under the Freedom of Information Act to perform a legal duty under the Privacy Act, which the government ultimately performed during the course of the appeals in the lower court. It is also an absolute denial of judicial due process for the court below to

issue Orders imposing sanctions in moot cases. It is also an absolute denial of due process for the Tax Court to issue decisions against Hudgins and Billman in a statutory scheme that lacked subject matter jurisdiction over them.

Wherefore, it is prayed:

(1) that the Orders of June 17, 1987 imposing the mandates, judgments and sanctions be dismissed for lack of jurisdiction. That the judgments of January 8, 1987 be vacated as moot and the three FOIA lawsuits involved be remanded for dismissal for lack of jurisdiction.

(2) that the related Tax Court cases be vacated as moot and remanded for dismissal for lack of jurisdiction for similar reasons.

In the alternative,

(3) that the FOIA lawsuits on review and the related Tax Court cases be reversed on the basis of the res judicata of Hudgins. *CA 84-1712, supra.*

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS B. HUDGINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	No. 84-1712
INTERNAL REVENUE SERVICE, *et al.*,	)	
	)	
	)	
Defendants.	)	
	)	

JUDGMENT

This action comes before the Court on defendant's motion for judgment on the pleadings. The plaintiff has opposed this motion.

Pursuant to the Freedom of Information Act and the Privacy Act, the plaintiff requested the Internal Revenue Service (IRS) to produce the statute or Executive Order that authorizes the Government to require the filing of individual tax returns. In response, the IRS supplied a copy of IRC § 6012, as well as copies of several other Code provisions. Plaintiff finds this response unsatisfactory because, he claims, the sections provided do not *require* private individuals to file. He therefore seeks an order compelling the IRS to produce the requested information. Plaintiff's argument is without merit. Section 6012 clearly authorizes the IRS to require the filing of individual tax returns. *See United States v. Drefke*, 707 F.2d 978, 981 (8th Cir.), *cert. denied*, 104 S.Ct. 359 (1983). It is

therefore a complete response to plaintiff's request. Accordingly, it is this 1st day of September, 1984, hereby

ORDERED: that defendant's motion for judgment on the pleadings should be, and hereby is, GRANTED; and it is further

ORDERED: that the plaintiff's complaint should be, and hereby is, DISMISSED.

/s/ Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

FILED
SEP 10 1984
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

APPENDIX B

NOT TO BE PUBLISHED - SEE LOCAL RULE 8(f)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5922 **September Term, 1986**

Thomas B. Hudgins, and Billie E. Billman,
Appellants

v.

Internal Revenue Service

C.A. No. 84-03830

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Before: WALD, Chief Judge; EDWARDS and STARR, Circuit Judges

JUDGMENT

This cause came to be heard on the record on appeal from the United States District Court for the District of Columbia and briefs were filed by the parties. The issues have been accorded full consideration by the court, and occasion no need for a published opinion. *See* Local Rule 13(c).

On consideration thereof, it is

ORDERED and **ADJUDGED** by the court that the district court's order of August 6, 1985 be affirmed for the reasons set forth in the accompanying memorandum. It is

FURTHER ORDERED by the court that the motions filed by appellants are dismissed as moot. It is

FURTHER ORDERED by the court, on its own motion, that sanctions be imposed on appellants in the amount of $1,500.00. The appellee has stated that the average cost for litigating such cases is $1,246.00. In light of the number of motions filed by appellants and the extensive briefs submitted by appellee, we are certain that the appellee's expenses in litigating this case are well above its average costs. Moreover, the amount of the sanction is below the double costs we are authorized to impose under Rule 38 of the Federal Rules of Appellate Procedure.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* Local Rule 14.

Per Curiam

No. 85-5992 - *Hudgins, et al. v. IRS*

MEMORANDUM

The issue before this court is whether the district court erred in dismissing appellants' case for failure to state a claim under the Freedom of Information Act. 5 U.S.C. § 552. This appeal and the related case, docket Nos. 85-6064 and 85-6065, represent the culmination of three of six cases filed in the United States District Court for the District of Columbia which challenge federal income taxation under the FOIA and/or the Privacy Act. We affirm the orders of the district court.

Appellants allege that the Privacy Act notices on the Internal Revenue Service's tax forms are defective. Under the Freedom of Information Act, they seek an order compelling the IRS to produce proper Privacy Act notices. In particular, appellants claim that the tax forms improperly state that disclosure of one's social security number is mandatory. Appellants claim that because the federal income tax system is voluntary and because the notice provisions do not state all of the authority underlying the requirements of the Privacy Act and do not qualify as substantive rules under the Administrative Procedure Act, 5 U.S.C. § 5572(a)(1)(D), the disclosure of one's social security number on the tax forms is voluntary.

Insofar as a violation of the Federal Income Tax laws can trigger penalties, it is nonsensical to argue that compliance is "voluntary." The authority for requiring disclosure of one's social security number on the IRS tax forms is set forth in the Internal Revenue Code, particularly sections 6001, 6011, 6019, and 6012. These forms need not qualify as substantive rules under the APA to be valid and enforceable. The requirement which the APA

imposes is that the Federal Register contain information as to where the notices can be obtained. 5 U.S.C. § 5572(a)(1)(D). Furthermore, the statutory authority for disclosure which appears in notices is adequate for the purposes of Privacy Act compliance.

The underlying rationale for appellants' claim is wholly without merit, a fact of which appellants should be aware given the disposition of their prior cases. Nevertheless, they repeatedly bring the same issue before the courts and inundate us with frivolous motions. Appellants' case is nothing more than, to use the words of Judge Oberdorfer, a "thinly disguised suit" for a decision which would have the effect of exempting them from tax liability. *Hudgins v. IRS,* 54 A.F.T.R. 6408 (D.D.C. Sept. 20, 1984), *aff'd,* No. 84-5720, unpublished order (D.C. Cir. May 14, 1985). Therefore, we have imposed sanctions on appellants in the amount of $1,500.00 in this case. We have also sanctioned appellants for the amount of $1,500.00 in the related case, Docket Nos. 85-6064 and 85-6065.

FILED
JAN 8 1987
UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

George A. Fisher
Clerk

NOT TO BE PUBLISHED - SEE LOCAL RULE 8 (f)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-6064 **September Term, 1986**

Billie E. Billman, Appellant
C.A. No. 85-01014
C.A. No. 85-00865

v.

Internal Revenue Service

And Consolidated Case No. 85-6065

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Before: WALD, Chief Judge; EDWARDS and STARR, Circuit Judges

JUDGMENT

This cause came to be heard on the record on appeal from the United States District Court for the District of Columbia and briefs were filed by the parties. The issues have been accorded full consideration by the court, and occasion no need for a published opinion. *See* Local Rule 13(c).

On consideration thereof, it is

ORDERED and **ADJUDGED** by the court that the district court's order of August 26, 1985 be affirmed for the reasons set forth in the memorandum issued in Docket No. 85-5992. It is the memorandum issued in Docket No. 85-5992. It is

FURTHER ORDERED by the court that the motions filed by appellants are dismissed as moot. It is

FURTHER ORDERED by the court, on its own motion, that sanctions be imposed on appellants in the amount of $1,500.00. The appellee has stated that the average cost for litigating such cases is $1,246.00. In light of the number of motions filed by appellants and the extensive briefs submitted by appellee, we are certain that the appellee's expenses in litigating this case are well above its average costs. Moreover, the amount of the sanction is below the double costs we are authorized to impose under Rule 38 of the Federal Rules of Appellate Procedure.

United States Court of Appeals
for the District of Columbia Circuit
FILED JAN 8 1987
GEORGE A. FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-6064 **September Term, 1986**

Page Two

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petitio for rehearing. *See* Local Rule 14.

Per Curiam

Bill of cost must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Thomas B. Hudgins and Billie E. Billman,
Appellant

v.

Commissioner of Internal Revenue,
Appellee.

Cir No. 85-5992 combined with Cir. Nos. 85-6064/6065

Motion for the Court to vacate the judgment of January 8. 1987 as moot

---

Appellants Hudgins and Billman would first like to thank the Court for circulating their suggestion for a rehearing en banc to the full Court.

Billman and Hudgins respecfully request the Court to vacate the judgment of January 8, 1987 as moot. During the course of the instant appeal, the appellee has promulgated a new jurisdictional disclosure regulation for 1986 that cites section 6012 IRC as an individual's requirement to disclose information on a federal individual income tax return. This was a major complaint on appeal by appellants. See the new IRS Privacy Act and Paperwork Reduction Act Notice for 1986, attachment 1.

Mootness, absense of controversy, is jurisdictional and may be heard at any time. The Supreme Court has long

held that when a civil case coming from a federal court "has become entirely moot, it is the duty of the appellate court" not merely to dismiss the appeal but to "set aside [that is, to vacate] the decree below and to remand the cause with direction to dismiss." *Duke Power Co. v. Greenwood County,* 299 U.S. 259, 267 (1936); *Great Western Sugar Co. v. Nelson,* 442 U.S. 92, 93-94 (1979); *Alambama v. Davis,* 446 U.S. 903 (1980); *U.S. V. Munsingwear Corp.,* 340 U.S. 36, 39-41 (1950). This practice is the same in cases coming from administrative agencies as from the district courts. *Mechling Barge Line v. U.S.,* 368 U.S. 324 (1961); *Board of Governors v. Security Bancorp,* 454 U.S. 1118 (1981).

Appellee's citing of section 6012 IRC in their new jurisdictional disclosure regulation, for all intensive purposes, moots the instant suits on appeal. It conclusively shows that there was no requirement to publish the old regulation in the Federal Register and it satifies the basic complaint of Hudgins and Billman that the regulation should have cited section 6012 IRC in the first place. Inas much as mootness is jurisdictional, the lawsuits on appeal could not have been "wholly without merit" as declared by the judgment of January 8, 1987.

Hudgins and Billman regret any inconvenience the instant suits may have brought the Court.

Wherefore, it is respectfully requested that the judgment of January 8, 1987 be vacated as moot.

Date: March 16, 1987

Respectfully submitted,

Thomas B. Hudgins
Billie E. Billman
Attorneys, pro se
Box 3394 Albrook
APO Mimai, Fl 34002
Tel: 60-3730
(Republic of Panama)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of a motion for the Court to vacate the judgment of January 8, 1987 as moot was forwarded to: U.S. Department of Justice, Tax Division, Appeals Section, Attn: Mr. Michael Paup, Esq., Washington, D.C. 20530 by certified no. P-499-747-834.

Under penalties of perjury, the foregoing statement is true and correct.

Date: March 16, 1987

Respectfully submitted,

Thomas B. Hudgins
Billie E. Billman
Attorneys, pro se
Box 3394 Albrook
APO Mimai, Fl 34002
Tel: 60-3730
(Republic of Panama)

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-6064 **September Term, 1986**
CA No. 84-03830

Thomas B. Hudgins and
Billie E. Billman

v.

Internal Revenue Service

Before: **WALD,** Chief Judge; **EDWARDS** and **STARR,** Circuit Judges

ORDER

The judgment of the Court filed on January 8, 1987 imposed sanctions upon appellants in the amount of $1,500.00. With the issuance of the Court's mandate on this date, the assessed amount is now due and payable. Payment should be submitted directly to counsel for appellee. Payment should not be submitted to the Clerk of this Court.

. The Clerk is directed to include this order in the mandate of the Court.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

BY: /s/
Robert A. Bonner
Deputy Clerk

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit
FILED JUN 17 1987
GEORGE A. FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5992 **September Term, 1986**
CA No. 84-03830

Thomas B. Hudgins and
Billie E. Billman

v.

Internal Revenue Service

Before: **WALD,** Chief Judge; **EDWARDS** and **STARR,** Circuit Judges

ORDER

The judgment of the Court filed on January 8, 1987 imposed sanctions upon appellants in the amount of $1,500.00. With the issuance of the Court's mandate on this date, the assessed amount is now due and payable. Payment should be submitted directly to counsel for appellee. Payment should not be submitted to the Clerk of this Court.

The Clerk is directed to include this order in the mandate of the Court.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

BY: /s/
Robert A. Bonner
Deputy Clerk

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit
FILED JUN 17 1987
GEORGE A. FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-6064 **September Term, 1986**
CA No. 85-01014

Billie E. Billman

v.

Internal Revenue Service

Before: **WALD,** Chief Judge; **EDWARDS** and **STARR,** Circuit Judges

ORDER

The judgment of the Court filed on January 8, 1987 imposed sanctions upon appellants in the amount of $1,500.00. With the issuance of the Court's mandate on this date, the assessed amount is now due and payable. Payment should be submitted directly to counsel for appellee. Payment should not be submitted to the Clerk of this Court.

The Clerk is directed to include this order in the mandate of the Court.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

BY: /s/
Robert A. Bonner
Deputy Clerk

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit
FILED JUN 17 1987
GEORGE A. FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-6064 **September Term, 1986**
CA No. 85-01014

Billie E. Billman

v.

Internal Revenue Service

And Consolidated Case 85-6065

Before: **WALD,** Chief Judge; **EDWARDS** and **STARR,** Circuit Judges

ORDER

The judgment of the Court filed on January 8, 1987 imposed sanctions upon appellants in the amount of $1,500.00. With the issuance of the Court's mandate on this date, the assessed amount is now due and payable. Payment should be submitted directly to counsel for appellee. Payment should not be submitted to the Clerk of this Court.

The Clerk is directed to include this order in the mandate of the Court.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

BY: /s/
Robert A. Bonner
Deputy Clerk

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit
FILED JUN 17 1987
GEORGE A. FISHER
Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 86-1602 **September Term, 1986**

Billie E. Billman
Appellant,

v.

Commissioner of Internal Revenue
Appellee

Before: WALD, Chief Judge,
Mikva and Buckley, Circuit Judges

ORDER

Upon consideration of appellant's Motion For Recusal and it appearing that this court has previously disposed of all the issues raised in the instant appeal, *see Hudgins v. IRS,* No. 85-5992, unpublished memorandum (D.C. Cir. January 8, 1987), and *Hudgins v. IRS,* No. 85-6064, unpublished memorandum (D.C. Cir. January 8, 1987), and the orders denying the Motions To Vacate filed therein, it is

ORDERED by the court that the Motion for Recusal be denied. Appellant's broad and vague request does not present a basis for the recusal of any judge of this court from this case. It is

FURTHER ORDERED by the Court that appellant show cause within forty-five days of the date of this order why this case should or should not be dismissed on the ground of claim preclusion, *see Allen v. McCurry,* 449 U.S. 90, 94 (1980); *Hardison v. Alexander,* 655 F.2d 1281, 1288 (D.C. Cir. 1981); 18 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 4406 at 45 (1981), or alternatively, why the Tax Court decision should not be summarily affirmed. Appellee shall file a reply to appellant's response within ten days after the submission of said response.

Per Curiam

United States Court of Appeals
For the District of Columbia Circuit
Filed May 20, 1987
George A. Fisher,
Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Cir. No. 85-5992

Thomas B. Hudgins & Billie E. Billman
Appellant,

v.

Internal Revenue Service,
Appellee

NOTICE OF APPEAL

Notice is hereby given that Thomas B. Hudgins and Billie E. Billman, appellants above named, hereby appeal to the Supreme Court of the United States from the mandate issued by this Court on June 17, 1987 that denies appellants' motion to vacate this Court's judgment of January 8, 1987 as moot.

This appeal is taken pursuant to 28 USC 1252.

Thomas B. Hudgins
Billie E. Billman
Box 3394 Albrook
APO Mimai, Fl 34002
Tel: 52-1019
(Republic of Panama)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Cir. No. 85-6064

Billie E. Billman
Appellant,

v.

Internal Revenue Service,
Appellee

And consolidated case No. 85-6065
Thomas B. Hudgins v. Internal Revenue Service

NOTICE OF APPEAL

Notice is hereby given that Billie E. Billman and Thomas B. Hudgins, appellants above named, hereby appeal to the Supreme Court of the United States from the mandate issued by this Court on June 17, 1987 that denies appellants' motion to vacate this Court's judgment of January 8, 1987 as moot.

This appeal is taken pursuant to 28 USC 1252.

Billie E. Billman
Thomas B. Hudgins
Box 3394 Albrook
APO Mimai, Fl 34002
Tel: 52-1019
(Republic of Panama)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the NOTICE of Appeal in Cir. No. 85-5992, Hudgins and Billman v. IRS and a copy of the Notice of Appeal, Cir. No. 85-6064, Billman v. IRS, consolidated with Cir. No. 85-6065, Hudgins v. IRS were mailed to: Clerk of the Court, United States Court of Appeals for the District of Columbia Circuit, United States Courthouse, Washington, D.C. by express mail, postage prepaid for:

The Honorable Patricia M. Wald, Chief Judge
U.S. Court of Appeals for
The District of Columbia Circuit
U.S. Courthouse
Washington, D.C. 20001
The Honorable Harry T. Edwards, Circuit Judge
U.S. Court of Appeals for
The District of Columbia Circuit
U.S. Courthouse
Washington, D.C. 20001
The Honorable Kenneth W. Starr, Circuit Judge
U.S. Court of Appeals for
The District of Columbia Circuit
U.S. Courthouse
Washington, D.C. 20001

and by first class mail, postage prepaid to:

Michael L. Paup, Esq.
U.S. Dept. of Justice
Tax Division, Appeals Section
Washington, D.C. 20530

All parties required to be served have been served.

Under penalties of perjury, the foregoing statement is true and correct.

Date: June 29, 1987

/s/
Thomas B. Hudgins
Billie E. Billman
Box 3394 Albrook
APO Mimai, Fl 34002
Tel: 52-1019
(Republic of Panama)

Privacy Act and Paperwork Reduction Act Notice

The Privacy Act of 1974 and Paperwork Reduction Act of 1980 say that when we ask you for information, we must tell you: our legal right to ask for the information; what major purposes we have in asking for it and how it will be used; what could happen if we do not receive it; and whether your response is voluntary, required to obtain a benefit, or mandatory under the law.

For the Internal Revenue Service, the laws include tax returns and any papers filed with them and any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a) and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections. Code section 6109 and its regulations say that you must show your social security number on what you file. This is so we know who you are, and can process your return and papers. You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund.

We ask for tax return information to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. And we may give it to foreign governments because of tax treaties they have with the United States.

If you do not file a return, do not provide the information we ask for, or provide fraudulent information, the law provides that you may be charged penalties and, in certain cases, you may be subject to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on the tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. It may help you if we ask you for other information. If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

1986 Earned Income Credit Table

Caution: This Is Not a Tax Table

To find your earned income credit: Read down the column titled "If line 3 or 4 of the worksheet is—" and find the appropriate amount from the Earned Income Credit Worksheet on page 16. Read across to the right and find the amount of the earned income credit. Enter that amount on line 5 or 6 of the worksheet, whichever applies.

If line 3 or 4 of the worksheet is—		Your earned income credit is—	If line 3 or 4 of the worksheet is—		Your earned income credit is—	If line 3 or 4 of the worksheet is—		Your earned income credit is—	If line 3 or 4 of the worksheet is—		Your earned income credit is—	If line 3 or 4 of the worksheet is—		Your earned income credit is—
Over	But not over		Over	But not over		Over	But not over		Over	But not over		Over	But not over	
$0	$50	$3	$2,000	$2,050	$223	$4,000	$4,050	$443	$7,450	$7,500	$431	$9,450	$9,500	$186
50	100	8	2,050	2,100	228	4,050	4,100	448	7,500	7,550	425	9,500	9,550	180
100	150	14	2,100	2,150	234	4,100	4,150	454	7,550	7,600	419	9,550	9,600	174
150	200	19	2,150	2,200	239	4,150	4,200	459	7,600	7,650	413	9,600	9,650	168
200	250	25	2,200	2,250	245	4,200	4,250	465	7,650	7,700	406	9,650	9,700	162
250	300	30	2,250	2,300	250	4,250	4,300	470	7,700	7,750	400	9,700	9,750	156
300	350	36	2,300	2,350	256	4,300	4,350	476	7,750	7,800	394	9,750	9,800	150
350	400	41	2,350	2,400	261	4,350	4,400	481	7,800	7,850	388	9,800	9,850	144
400	450	47	2,400	2,450	267	4,400	4,450	487	7,850	7,900	382	9,850	9,900	138
450	500	52	2,450	2,500	272	4,450	4,500	492	7,900	7,950	376	9,900	9,950	131
500	550	58	2,500	2,550	278	4,500	4,550	498	7,950	8,000	370	9,950	10,000	125
550	600	63	2,550	2,600	283	4,550	4,600	503	8,000	8,050	364	10,000	10,050	119
600	650	69	2,600	2,650	289	4,600	4,650	509	8,050	8,100	358	10,050	10,100	113
650	700	74	2,650	2,700	294	4,650	4,700	514	8,100	8,150	351	10,100	10,150	107
700	750	80	2,700	2,750	300	4,700	4,750	520	8,150	8,200	345	10,150	10,200	101
750	800	85	2,750	2,800	305	4,750	4,800	525	8,200	8,250	339	10,200	10,250	95
800	850	91	2,800	2,850	311	4,800	4,850	531	8,250	8,300	333	10,250	10,300	89
850	900	96	2,850	2,900	316	4,850	4,900	536	8,300	8,350	327	10,300	10,350	83
900	950	102	2,900	2,950	322	4,900	4,950	542	8,350	8,400	321	10,350	10,400	76
950	1,000	107	2,950	3,000	327	4,950	5,000	547	8,400	8,450	315	10,400	10,450	70
1,000	1,050	113	3,000	3,050	333	5,000	6,500	550	8,450	8,500	309	10,450	10,500	64
1,050	1,100	118	3,050	3,100	338	6,500	6,550	547	8,500	8,550	303	10,500	10,550	58
1,100	1,150	124	3,100	3,150	344	6,550	6,600	541	8,550	8,600	296	10,550	10,600	52
1,150	1,200	129	3,150	3,200	349	6,600	6,650	535	8,600	8,650	290	10,600	10,650	46
1,200	1,250	135	3,200	3,250	355	6,650	6,700	529	8,650	8,700	284	10,650	10,700	40
1,250	1,300	140	3,250	3,300	360	6,700	6,750	523	8,700	8,750	278	10,700	10,750	34
1,300	1,350	146	3,300	3,350	366	6,750	6,800	516	8,750	8,800	272	10,750	10,800	28
1,350	1,400	151	3,350	3,400	371	6,800	6,850	510	8,800	8,850	266	10,800	10,850	21
1,400	1,450	157	3,400	3,450	377	6,850	6,900	504	8,850	8,900	260	10,850	10,900	15
1,450	1,500	162	3,450	3,500	382	6,900	6,950	498	8,900	8,950	254	10,900	10,950	9
1,500	1,550	168	3,500	3,550	388	6,950	7,000	492	8,950	9,000	248	10,950	10,999	3
1,550	1,600	173	3,550	3,600	393	7,000	7,050	486	9,000	9,050	241			
1,600	1,650	179	3,600	3,650	399	7,050	7,100	480	9,050	9,100	235			
1,650	1,700	184	3,650	3,700	404	7,100	7,150	474	9,100	9,150	229	**$11,000 or more—you cannot take the credit**		
1,700	1,750	190	3,700	3,750	410	7,150	7,200	468	9,150	9,200	223			
1,750	1,800	195	3,750	3,800	415	7,200	7,250	461	9,200	9,250	217			
1,800	1,850	201	3,800	3,850	421	7,250	7,300	455	9,250	9,300	211			
1,850	1,900	206	3,850	3,900	426	7,300	7,350	449	9,300	9,350	205			
1,900	1,950	212	3,900	3,950	432	7,350	7,400	443	9,350	9,400	199			
1,950	2,000	217	3,950	4,000	437	7,400	7,450	437	9,400	9,450	193			

BEST AVAILABLE COPY

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5992 **September Term, 1986**

Thomas B. Hudgins and
Billie E. Billman,

v.

Internal Revenue Service

CA No. 84-03830

BEFORE: **WALD,** Chief Judge; **EDWARDS** and **STARR,** Circuit Judges

ORDER

Upon consideration of appellants' petition for rehearing, it is

ORDERED, by the Court, that the petition is denied.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

BY: /s/ Robert A. Bonner
Robert A. Bonner
Chief Deputy Clerk

United States Court of Appeals
For The District of Columbia Circuit
FILED MAR 10 1987
GEORGE A. FISHER
Clerk

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-5992 **September Term, 1986**

Thomas B. Hudgins and Billie E. Billman, CA No. 84-03830

v.

Internal Revenue Service

BEFORE: Wald, Chief Judge; Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams and D.H. Ginsburg, Circuit Judges

ORDER

Appellants' suggestion for rehearing *en banc* has been circulated to the full Court. No member of the Court requested the taking of a vote thereon. Upon consideration of the foregoing, it is

ORDERED, by the Court *en banc* that appellants' suggestion is denied.

Per Curiam

FOR THE COURT:
GEORGE A. FISHER, CLERK

BY: /s/ Robert A. Bonner
Robert A. Bonner
Chief Deputy Clerk

United States Court of Appeals
For The District of Columbia Circuit
FILED MAR 10 1987
GEORGE A. FISHER
Clerk